

FILED

JUN 05 2014

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

GREGORY ALLEN LEWANDOWSKI,)	Civ. 14-4063-LLP
)	
Plaintiff,)	
)	
vs.)	ORDER DENYING MOTION FOR
)	RECONSIDERATION
KAREN E. SCHREIER,)	
)	
Defendant.)	

Plaintiff, Gregory Allen Lewandowski, filed a pro se civil rights lawsuit pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Dockets 1, 2. On May 14, 2014, the Court denied Lewandowski leave to proceed in forma pauperis, citing the three-strike rule and noting that Lewandowski could no longer proceed in forma pauperis absent a showing that he is under imminent danger of serious physical injury. Docket 5. Lewandowski now requests that the Court reconsider its ruling. Docket 6. To support his argument, Lewandowski represents that prior dismissals were not made pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)–(iii), and thus did not constitute “strikes” under the PLRA’s three-strike rule.

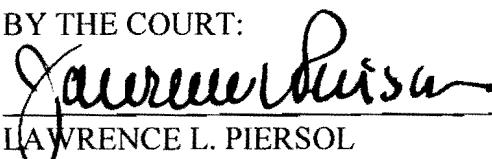
The Court, however, has reviewed Lewandowski’s prior dismissals and finds that at least three cases wherein Lewandowski was granted leave to proceed in forma pauperis were dismissed pursuant to § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted. *See Lewandowski v. Day Cnty. Cir. Ct. et al.*, Civ. 09-4089, Docket 17; *Lewandowski v. Flemmer*, Civ. 11-4125, Docket 6; *Lewandowski v. Day Cnty. Cir. Ct.*, Civ. 11-4106, Docket 5. In fact, when the Court dismissed Lewandowski’s complaint in *Lewandowski v. Day Cnty. Cir. Ct.*, Civ. 11-4106, the Court informed Lewandowski that the dismissal constituted his third strike and that he was henceforth “ineligible to litigate in forma pauperis unless he demonstrates that he is in ‘imminent danger of serious physical injury.’” *Lewandowski v. Day Cnty. Cir. Ct.*, Civ. 11-4106, Docket 5 at 4 (quoting 28 U.S.C. § 1915(g)). Accordingly, the Court properly invoked the three-strike rule herein by denying Lewandowski leave to proceed in forma pauperis.

Lewandowski also takes issue with the assessed filing fee, which he believes should amount to \$350 rather than \$400. The cost of filing a civil action, suit, or proceeding in federal district court is \$350. 28 U.S.C. § 1914(a). Pursuant to the District Court's Miscellaneous Fee Schedule, however, an additional \$50 is assessed in civil actions, suits, or proceedings to cover administrative costs. *Id.* This additional fee does not apply to persons granted in forma pauperis status under 28 U.S.C. § 1915. *Id.* Because Lewandowski was not granted leave to proceed in forma pauperis in this action, he must pay a \$400 filing fee. It is therefore

ORDERED that Lewandowski's motion for reconsideration (Docket 6) is denied. Lewandowski must pay the \$400 filing fee to the Clerk, U.S. District Court.

Dated this 5th day of June, 2014.

BY THE COURT:



LAWRENCE L. PIERSOL
UNITED STATES DISTRICT JUDGE

ATTEST:

JOSEPH HAAS, CLERK

BY: Jennifer Stevens
DEPUTY